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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/297,591 05/03/99 NAMBU

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HM12/0426

EXAMINER

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ART UNIT

PAPER NUMBER

1616

DATE MAILED:

04/26/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/297,591

Applicant(s)

NAMBU, TAKANORI

Examiner

Pernell V. Williams

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some * c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) _____.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

- 14) ☒ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 17) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

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DETAILED ACTION

Claims 1-3 are pending and available for examination.

Specification

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.
2. The use of the trademarks and trade names FLEXAN, DARVAN, CARTARETINE, POLYQUATERNIUM, AMPHOMER, YUKOFORMER, LUVIMER, RESYN, CELQUAT, PERMETHYL, and TEGO BETAINE has been noted in this application. All trademarks should be capitalized wherever they appear, and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,240,450 (Grollier *et al.*).

Determining the scope and contents of the prior art

Grollier *et al.* discloses as for a hair-treatment composition all of the following:

- Optional amphoteric polymers (column 44 lines 39-52; column 49 lines 23-33), which correspond to component (a) in the instant application;
- 0.01-10% by weight anionic polymers (column 48 lines 63-69), which correspond to component (b) in the instant application;

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- 0.01-10% by weight cationic polymers (column 48 lines 58-63), which correspond to component (c) in the instant application;
- optional non-ionic surface active agents (column 49 lines 23-33); and,
- formulation into an aqueous or an aqueous-alcoholic solution, gel, emulsion, cream, milk, or dispersion (column 4 lines 10-16).

Ascertaining the differences between the prior art and the claims at issue

The instant application claims for a hair-treatment composition all of the following: 0.2-5% amphoteric polymers, 0.2-5% anionic polymers, and 0.2-5% cationic polymers. The instant application also claims the addition of non-ionic surfactants for a mousse, and formulation of the three *supra* polymers claimed into a hair spray.

Resolving the level of ordinary skill in the pertinent art

The instant application, and Grollier *et al.* are all seen to be in the same field of endeavor which is the art of keratin treatment composition formulations. In light of Grollier *et al.*, it would have been obvious to the practitioner of ordinary skill in this art at the time the invention was made to use amphoteric polymers, anionic polymers, and cationic polymers in a hair treatment composition, because the prior art teaches that such a formulation is efficacious as a hair treatment composition. Normally, changes in temperature, concentration, or both, is not a patentable modification. However, such changes may impart patentability to a process if the ranges claimed produce a new and

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unexpected result that is different in kind and not merely in degree from results of prior art; such ranges are termed "critical" ranges, and applicant has burden of proving such criticality. Even though applicant's modification may result in great improvement and utility over prior art, it may still not be patentable if said modification was within the capabilities of one skilled in the art. More particularly, where the general conditions of the claim are disclosed in the prior art, it is not inventive to discover optimum or workable ranges by routine experimentation. In re Aller et al. 105 USPQ 233. In light of *Grollier et al.*, it also would have been obvious to the practitioner of ordinary skill in this art at the time the invention was made to add nonionic surfactants, because the prior art teaches that nonionic surfactants are well-known to be used to formulate hair treatment compositions into various useable forms. In light of *Grollier et al.*, it also would have been obvious to the practitioner of ordinary skill in this art at the time the invention was made to formulate the claimed hair treatment composition into a hairspray, because the prior art teaches the aqueous and aqueous-alcoholic solutions that are well known within the art to be used in spray formulations.

Considering objective evidence present in the application indicating obviousness or nonobviousness

It is noted that there has not been presented any evidence of record to obviate the rejection cited *supra*. The disclosures of the components as set forth in the prior art

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patents are seen to render the instantly claimed composition *prima facie* obvious.
Hence, there is no evidence in the present application to support nonobviousness.

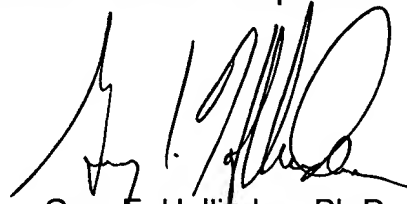
Conclusion

Claims 1-3 are not allowed at this time.

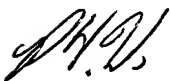
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pernell V. Williams, whose telephone number is (703) 308-4645. The examiner can normally be reached from 8AM to 4:30PM Monday to Thursday, and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, José Dees, can be reached at (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Gary E. Hollinden, Ph.D.
Primary Examiner
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pvw
April 19, 2000